

1 **WO**

2

3

4

5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8

9 Gerald C. Dunford,

No. CV-23-00855-PHX-JJT

10 Plaintiff,

ORDER

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

15 At issue is the denial of Plaintiff Gerald C. Dunford's Application for Supplemental
16 Security Income by the Social Security Administration ("SSA") under the Social Security
17 Act ("the Act"). Plaintiff filed a Complaint (Doc. 1) with this Court seeking judicial review
18 of that denial, and the Court now addresses Plaintiff's Opening Brief (Doc. 9, "Pl. Br."),
19 Defendant Social Security Administration Commissioner's Answering Brief (Doc. 13,
20 "Def. Br."), and Plaintiff's Reply (Doc. 14). The Court has reviewed the briefs and
21 Administrative Record (Doc. 8, "R.") and now reverses the Administrative Law Judge's
22 decision (R. at 21–31) as upheld by the Appeals Council (R. at 1–3).

23 **I. BACKGROUND**

24 Plaintiff filed an application for Supplemental Security Income on April 7, 2021,
25 for a period of disability beginning November 1, 2020. (R. at 21.) Plaintiff's claims were
26 initially denied on September 21, 2021, and upon reconsideration on March 31, 2022. (R.
27 at 21.) Plaintiff then testified at a hearing before an Administrative Law Judge ("ALJ") on
28 November 17, 2022. (R. at 37–63.) On December 7, 2022, the ALJ denied Plaintiff's

1 Application. (R. at 37–63.) On March 23, 2023, the Appeals Council denied a request for
2 review of the ALJ’s decision. (R. at 1–3.) On May 16, 2023, Plaintiff filed this action
3 seeking judicial review.

4 The Court has reviewed the medical evidence in its entirety and finds it unnecessary
5 to provide a complete summary here. The pertinent medical evidence will be discussed in
6 addressing the issues raised by the parties. In short, upon considering the medical records
7 and opinions, the ALJ found that Plaintiff has the following severe impairments: bipolar
8 type schizoaffective disorder, anxiety disorder, trauma disorder, depression, and substance
9 addiction disorder. (R. at 24.)

10 Ultimately, the ALJ determined that Plaintiff “does not have an impairment or
11 combination of impairments that meets or medically equals the severity of one of the listed
12 impairments in 20 CFR Part 404.” (R. at 25.) The ALJ found that Plaintiff has the residual
13 functional capacity (“RFC”) to perform a full range of work at all exertional levels but with
14 certain non-exertional limitations, including that Plaintiff can only perform simple work,
15 should avoid public interaction, and can have only occasional interaction with coworkers
16 and supervisors. (R. at 26.) Based on a vocational expert’s answers to hypothetical
17 questions, the ALJ concluded that Plaintiff could perform work as a janitor, machine
18 feeder, or kitchen helper, and is not disabled under the Act. (R. at 30.)

19 **II. LEGAL STANDARD**

20 In determining whether to reverse an ALJ’s decision, the district court reviews only
21 those issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236 F.3d 503,
22 517 n.13 (9th Cir. 2001). The court may set aside the Commissioner’s disability
23 determination only if the determination is not supported by substantial evidence or is based
24 on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is
25 more than a scintilla, but less than a preponderance; it is relevant evidence that a reasonable
26 person might accept as adequate to support a conclusion considering the record as a whole.
27 *Id.* To determine whether substantial evidence supports a decision, the court must consider
28 the record as a whole and may not affirm simply by isolating a “specific quantum of

1 supporting evidence.” *Id.* As a general rule, “[w]here the evidence is susceptible to more
 2 than one rational interpretation, one of which supports the ALJ’s decision, the ALJ’s
 3 conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002)
 4 (citations omitted).

5 To determine whether a claimant is disabled for purposes of the Act, the ALJ
 6 follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of
 7 proof on the first four steps, but the burden shifts to the Commissioner at step five. *Tackett*
 8 *v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ determines whether
 9 the claimant is presently engaging in substantial gainful activity. 20 C.F.R.
 10 § 404.1520(a)(4)(i). If so, the claimant is not disabled, and the inquiry ends. *Id.* At step
 11 two, the ALJ determines whether the claimant has a “severe” medically determinable
 12 physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If not, the claimant is not
 13 disabled, and the inquiry ends. *Id.* At step three, the ALJ considers whether the claimant’s
 14 impairment or combination of impairments meets or medically equals an impairment listed
 15 in Appendix 1 to Subpart P of 20 C.F.R. Part 404. 20 C.F.R. § 404.1520(a)(4)(iii). If so,
 16 the claimant is disabled. *Id.* If not, the ALJ proceeds to step four. *Id.* At step four, the ALJ
 17 assesses the claimant’s RFC and determines whether the claimant can still perform past
 18 relevant work. 20 C.F.R. § 404.1520(a)(4)(iv). If so, the claimant is not disabled, and the
 19 inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step, where he determines
 20 whether the claimant can perform any other work in the national economy based on the
 21 claimant’s RFC, age, education, and work experience. 20 C.F.R. § 404.1520(a)(4)(v). If
 22 so, the claimant is not disabled. *Id.* If not, the claimant is disabled. *Id.*

23 **III. ANALYSIS**

24 Plaintiff raises two arguments for the Court’s consideration: (1) The ALJ erred by
 25 rejecting the assessment of Plaintiff’s treating psychiatrist without providing sufficient
 26 explanation supported by substantial evidence, and (2) the ALJ erred by rejecting
 27 Plaintiff’s symptom testimony in the absence of specific, clear, and convincing reasons.
 28 (Pl. Br. at 1.)

1 **A. The Medical Opinion of Plaintiff's Treating Psychiatrist**

2 Plaintiff first argues that the ALJ erred by rejecting the medical opinion of his
 3 treating psychiatrist, Dr. Trudy Dockins, without providing sufficient explanation. (Pl. Br.
 4 at 11.)

5 The Ninth Circuit no longer accords special deference to a treating or examining
 6 physician. *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022). In 2017, the Social
 7 Security Administration amended the regulations for evaluating medical evidence. *See*
 8 Revisions to Rules Regarding Evaluation of Medical Evidence, 82 Fed. Reg. 5844, 5844
 9 (Jan. 18, 2017). The 2017 regulations provide that “[w]e will not defer or give any specific
 10 evidentiary weight, including controlling weight, to any medical opinion The most
 11 important factors we consider when we evaluate the persuasiveness of medical opinions
 12 . . . are supportability . . . and consistency.” 20 C.F.R. § 404.1520c(a). Other factors, which
 13 an ALJ “may, but [is] not required to[] explain” when evaluating the persuasiveness of a
 14 medical opinion, are the medical source’s “relationship with the claimant,”
 15 “specialization,” “familiarity with the other evidence in the claim,” and “understanding of
 16 our disability program’s policies and evidentiary requirements.” 20 C.F.R.
 17 § 404.1520c(b)(2), (c).

18 Moreover, the Ninth Circuit held its requirement that ALJs provide “specific and
 19 legitimate reasons” for rejecting a treating or examining doctor’s opinion is incompatible
 20 with the revised regulations. *Woods*, 32 F.4th at 790. Nonetheless, in rejecting a treating or
 21 examining doctor’s opinion as unsupported or inconsistent, an ALJ must provide an
 22 explanation—that is, reasons—supported by substantial evidence. *Id.* This means that the
 23 ALJ “must ‘articulate . . . how persuasive’ [he] finds ‘all of the medical opinions’ from
 24 each doctor or other source, and ‘explain how [he] considered the supportability and
 25 consistency factors’ in reaching these findings.” *Id.* (citing 20 C.F.R. § 404.1520c(b),
 26 (b)(2)).

27 Here, Dr. Dockins submitted a mental medical assessment finding that Plaintiff had
 28 moderately severe to severe limitations in most areas that preclude an eight-hour workday.

1 (R. at 953–54.) The ALJ found these limitations consistent with Plaintiff’s allegations of
 2 psychological symptoms, including insomnia, panic attacks, impulsive behaviors, loss of
 3 interest in activities, poor appetite, little energy, paranoia, and trouble concentrating. (R. at
 4 29.) But the ALJ also found the limitations to be inconsistent with Plaintiff’s score of 25
 5 out of 30 on a mini-mental status exam (“MMSE”), which “indicates no likelihood of
 6 cognitive impairment,” and his estimated IQ score “in the low average range.” (R. at 29,
 7 621.) The ALJ further found Dr. Dockins’s medical opinion inconsistent with Plaintiff’s
 8 ability “to live largely independently.” (R. at 29.) Finally, the ALJ found it “noteworthy”
 9 that Dr. Dockins mentioned in a July 2022 treatment note that Plaintiff was polite and
 10 cooperative, his thought processes were unremarkable, his memory was good, and his
 11 concentration was fair. (R. at 29, 996–97.)

12 Plaintiff argues that his MMSE score and estimated IQ level do not show
 13 inconsistency with Dr. Dockins’s opinion because the assessed limitations were not based
 14 on a cognitive disorder but rather on mood and anxiety disorders. (Pl. Br. at 13.) Indeed,
 15 as Plaintiff points out, the Ninth Circuit has stated that “observations of cognitive
 16 functioning . . . do not contradict [a claimant’s] reported symptoms of depression and social
 17 anxiety.” *Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014). And this Court has
 18 previously applied the Ninth Circuit’s rationale in circumstances similar to those at issue
 19 here: “[T]he MMSE does measure cognitive function But plaintiff’s limitations flow
 20 from her schizoaffective disorder and her depressive disorder, not from any cognitive
 21 disorder [O]bservations as to plaintiff’s cognitive functioning do not contradict her
 22 reported symptoms of depression” *Morris v. Berryhill*, 358 F. Supp. 3d 875, 882–83
 23 (D. Ariz. 2019).

24 In response, Defendant challenges Plaintiff’s premise that Dr. Dockins’s opinions
 25 were based on mood and anxiety disorders, arguing that “this is speculation [because]
 26 Dr. Dockins did not provide explanations for her assessed limitations.” (Def. Br. at 6.) Not
 27 so. In reviewing the record as a whole, it is clear that Dr. Dockins’s assessment was based
 28 on her treatment of Plaintiff for mood and anxiety disorders. For example, she adjusted

1 Plaintiff's diagnosis to schizoaffective disorder, bipolar type, to "reflect [that Plaintiff had]
 2 continued symptoms of psychosis during periods of relative mood stability," with
 3 additional diagnoses of posttraumatic stress disorder and unspecified anxiety disorder. (R.
 4 at 704.) Thus, the Court agrees with Plaintiff that Dr. Dockins's assessment was based on
 5 Plaintiff's mood and anxiety disorders, yet the ALJ rejected that assessment as inconsistent
 6 with Plaintiff's cognitive test scores. This is an insufficient reason to find inconsistency.
 7 *See Ghanim*, 763 F.3d at 1164.

8 Plaintiff also argues that the ALJ erred by failing to explain why he found
 9 Dr. Dockins's assessment inconsistent with Plaintiff's "ability to live largely
 10 independently." (R. at 29.) Defendant responds to this point only by arguing that the ALJ's
 11 conclusion was reasonable. (Def. Br. at 8.) But the ALJ did not explain how he reached
 12 that conclusion. Because an ALJ must explain how he considered the supportability and
 13 consistency factors in making his findings, *see Woods*, 32 F. 4th at 790, the Court agrees
 14 with Plaintiff that the ALJ erred by failing to provide further explanation. *See also Bogner*
 15 *v. Comm'r of Soc. Sec. Admin.*, No. CV-22-01908-PHX-DMF, 2023 WL 4734120, at *5
 16 (D. Ariz. July 25, 2023) (finding error when the ALJ rejected a medical opinion based on
 17 alleged inconsistency with claimant's activities of daily living without explaining how the
 18 activities contradicted the medical opinion).

19 Finally, Plaintiff notes that the ALJ appeared to discount Dr. Dockins's assessment
 20 based on a treatment record from July 2022 in which Dr. Dockins stated that Plaintiff had
 21 no mannerisms of note, was polite and cooperative, had sequential thought processes and
 22 coherent associations, and had good memory and fair insight. (R. at 29.) Although the ALJ
 23 concluded that Dr. Dockins's opinion was unpersuasive, he went no further than to call this
 24 specific treatment record "noteworthy"; he did not explicitly describe it as inconsistent with
 25 Dr. Dockins's assessment. To the extent the ALJ believed it to be inconsistent, he did not
 26 explain that finding. And as mentioned, an ALJ must explain how he considered the
 27 supportability and consistency factors in reaching his findings. *See Woods*, 32 F. 4th at
 28 790.

1 For those reasons, the Court finds that the ALJ erred in discounting the medical
 2 opinion of Plaintiff's treating psychiatrist.

3 **B. Plaintiff's Symptom Testimony**

4 Plaintiff also argues that the ALJ erred by rejecting his symptom testimony without
 5 providing specific, clear, and convincing reasons. (Pl. Br. at 18.) Although credibility is
 6 the province of the ALJ, an adverse credibility determination requires the ALJ to provide
 7 “specific, clear and convincing reasons for rejecting the claimant’s testimony regarding the
 8 severity of the claimant’s symptoms.” *Treichler v. Comm'r of Soc. Sec.*, 775 F.3d 1090,
 9 1102 (9th Cir. 2014) (citing *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996)). “In
 10 evaluating the credibility of pain testimony after a claimant produces objective medical
 11 evidence of an underlying impairment, an ALJ may not reject a claimant’s subjective
 12 complaints based solely on a lack of medical evidence to fully corroborate the alleged
 13 severity of pain.” *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). This is because
 14 “pain testimony may establish greater limitations than can medical evidence alone.” *Id.*
 15 But the ALJ may properly consider that the medical record lacks evidence to support
 16 certain symptom testimony. *Id.* at 681. The ALJ may also properly consider inconsistencies
 17 in the claimant’s testimony, including inconsistencies between the claimant’s testimony of
 18 daily activities and symptom testimony. *Id.*

19 Plaintiff testified at the hearing that he experienced significant paranoia,
 20 hallucinations, lack of concentration, and varying moods, and he was self-isolating and
 21 easily distracted. (R. at 37–63.) Plaintiff also submitted two function reports that indicated
 22 he had difficulty remembering, completing tasks, understanding, concentrating, following
 23 instructions, and getting along with others. (R. at 311–19, 357–64.) The ALJ found that
 24 Plaintiff’s medically determinable impairments could reasonably be expected to cause the
 25 alleged symptoms, but Plaintiff’s statements about the intensity, persistence, and limiting
 26 effects of the symptoms were inconsistent with the record “for the reasons explained in this
 27 decision.” (R. at 27.)

28

1 Yet the ALJ's decision is devoid of such reasons.¹ After describing Plaintiff's
 2 symptom testimony and function reports, the ALJ merely recited record evidence of
 3 Plaintiff's reported symptoms, diagnoses, treatments, and assessments. (R. at 27–28.) But
 4 at no point did the ALJ identify any of that evidence as a reason for discounting Plaintiff's
 5 particular testimony, other than simply stating that the "evidence combined with the
 6 paragraph B discussion above supports some of the claimant's allegations and was
 7 considered in assigning the [RFC].” (R. at 28.) A recitation of medical evidence is
 8 insufficient reasoning to discount symptom testimony.² See *Ghanim*, 763 F.3d at 1163
 9 (explaining that “[g]eneral findings are insufficient” and “the ALJ must identify what
 10 testimony is not credible and what evidence undermines the claimant's complaints”). The
 11 ALJ therefore erred by failing to provide specific, clear, and convincing reasons for
 12 discounting Plaintiff's symptom testimony.

13 C. The Credit-as-True Rule

14 Having shown that reversal is warranted, Plaintiff urges the Court to apply the
 15 credit-as-true rule. (Pl. Br. at 24–25.) The credit-as-true rule applies only in cases that raise
 16 “rare circumstances” permitting the Court to depart from the ordinary remand rule under
 17 which the case is remanded for additional investigation or explanation. *Treichler*, 775 F.3d
 18 at 1099–1102. These rare circumstances arise when three elements are present. First, the
 19 ALJ must have failed to provide legally sufficient reasons for rejecting medical evidence.
 20 *Id.* at 1100. Second, the record must be fully developed, there must be no outstanding issues
 21 that must be resolved before a determination of disability can be made, and the Court must

22 ¹ The ALJ provided some reasoning for discounting Plaintiff's alleged physical
 23 limitations (R. at 27), but Plaintiff's appeal focuses on his mental limitations (Pl. Br. at 19
 24 n. 8).

25 ² In the ALJ's recitation of evidence, he mentions that Plaintiff has a history of “no
 26 shows and non-compliance” in his treatment. (R. at 28.) Plaintiff takes issue with citing
 27 non-compliance as a reason to discount reported mental symptoms. (Pl. Br. at 20.) The
 28 Court concludes that the ALJ did not specifically cite the non-compliance as a reason to
 discount Plaintiff's testimony, but to the extent it may have served as a reason, the Court
 agrees with Plaintiff that it would be unwise for an ALJ to criticize a mentally ill claimant's
 inconsistent treatment schedule. See *Garrison v. Colvin*, 759 F.3d 995, 1018 n.24 (9th Cir.
 2014) (noting that “it is a questionable practice to chastise one with a mental impairment
 for the exercise of poor judgment in seeking rehabilitation”).

1 find that further administrative proceedings would not be useful. *Id.* at 1101. Further
2 proceedings are considered useful when there are conflicts and ambiguities that must be
3 resolved. *Id.* Third, if the above elements are met, the Court may “find[] the relevant
4 testimony credible as a matter of law . . . and then determine whether the record, taken as
5 a whole, leaves ‘not the slightest uncertainty as to the outcome of [the] proceeding.’” *Id.*
6 (citations omitted).

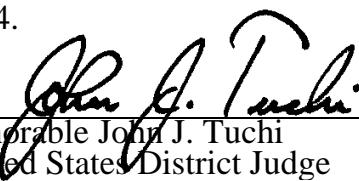
7 In this case, the ordinary remand rule applies because the reversible errors here arise
8 only out of the lack of explanation and reasoning in the decision. The Court is thus not
9 satisfied that there is no uncertainty as to the outcome. Accordingly, the Court will remand
10 this matter to the ALJ for further proceedings.

11 **IT IS THEREFORE ORDERED** reversing the decision of the Administrative
12 Law Judge (R. at 21–31) as upheld by the Appeals Council (R. at 1–3).

13 **IT IS FURTHER ORDERED** remanding this case to the Social Security
14 Administration for further proceedings consistent with this Order.

15 **IT IS FURTHER ORDERED** directing the Clerk of the Court to enter final
16 judgment accordingly and close this case.

17 Dated this 21st day of August, 2024.

18 
19 Honorable John J. Tuchi
United States District Judge

20
21
22
23
24
25
26
27
28